IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1620 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHADRESHKUMAR MANUBHAI MODI

Versus

NEW MARK WELL

Appearance:

1. Civil Revision Application No. 1620 of 1985

MR MB GANDHI for Petitioner No. 1

SERVED BY AFFIX.(N) for Respondent No. 1

SERVED BY AFFIX.-(R) for Respondent No. 2-4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/12/2002

ORAL JUDGEMENT

1. This is a revision application under Section 115 of the Civil Procedure Code, which will now be governed by the amendment introduced to the proviso thereof by

Civil Procedure Code (Amendment) Act, 1999.

2. The present applicant is defendant no.3 in the suit filed by opponent no.1 as the plaintiff. In the said suit the first opponent-plaintiff filed application Exh.33 setting out therein the plaintiff's submissions and facts and prayed that he should be permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action. Since the present applicant had objected to the grant of this application, the Trial Court heard learned counsel for the respective parties and ultimately, granted the application with a specific order that the plaintiff is permitted to withdraw the suit with permission to bring a fresh suit on the same cause of action.

2.1. It is this order which is the subject matter of the present revision.

3. Consequent to the amendment introduced in Section 115 of the Civil Procedure Code and particularly in the proviso thereto by the aforesaid amendment Act, this revision is examined initially on the aspect of its maintainability. It is clear that if the application presented by the plaintiff had been decided in favour of the present applicant in revision, it would not have disposed of the suit inasmuch as the Trial Court would then have refused the plaintiff permission to withdraw the suit with liberty to file a fresh suit.

4. It is urged by learned advocate for the petitioner that it was open to the Trial Court to refuse to grant permission to file a fresh suit on the same cause of action, at the same time granting permission to the plaintiff to withdraw the suit. This submission does not advance the case of the petitioner any further, if we examine the hypothetical case as suggested by the learned counsel for the petitioner. If the Trial Court refuses to grant permission to file fresh suit, but permits or directs plaintiff to withdraw the suit dehors liberty of filing a fresh suit, it would only amount to permitting the plaintiff to withdraw the suit unconditionally. This is obviously something which the plaintiff has not prayed for. Obviously, therefore there is no question of the Trial Court permitting only the withdrawal of the suit, without granting permission to file a fresh suit.

5. In the premises aforesaid, it could not possibly be said that had the trial Court passed an order in favour of the present applicant, it would have disposed of the suit. Consequently, therefore, the present

revision application does not satisfy the test of the amended proviso to Section 115 of the Civil Procedure Code and the revision is, therefore, not maintainable.

6. Another aspect which requires to be noted is that when the revision application was admitted on 3rd December, 1985 and rule was made returnable on 23rd December, 1985, more than 17 years ago, no interim relief was granted to the petitioner. It is therefore, almost a certainty that a fresh suit would have been filed pursuant to the impugned order and in case such suit was filed, in all probability, it would have been disposed of long ago.

7. Hence this revision application is dismissed and rule is discharged with no order as to costs.

[Y.B. BHATT, J.]

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